

From: Shari Rhode
Sent: Monday, May 23, 2022 4:56 PM
To: Nolte, Elisabeth P. - SOL
Cc: Wilemon, Kevin - SOL
Subject: RE: Walsh v. Dayemi d/b/a Longbranch Cafe - Mot. to Strike Jury Demand on Good Faith

Good afternoon to you both

With all due respect, I'll point out that my jury demand asks for a jury on all issues triable by a jury (Doc.13). Since there are issues triable by a jury, the Court may allow the jury to make an advisory decision even though the Court will make the ultimate decision on whether the defendants acted in good faith. If you choose to file a motion to strike, this is exactly how I will respond.

Shari

Shari R. Rhode
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Sent: Thursday, May 19, 2022 6:59 PM
To: Shari Rhode <shari@rhodelawfirm.com>
Cc: Wilemon, Kevin - SOL <Wilemon.Kevin@dol.gov>
Subject: RE: Walsh v. Dayemi d/b/a Longbranch Cafe - Mot. to Strike Jury Demand on Good Faith

Hi Shari,

Monday, May 23, works for us. I look forward to hearing from you then and hope you have a relaxing weekend after your busy week!

Thank you,
Elisa

Elisabeth Simcox Nolte | Trial Attorney
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From: Shari Rhode <shari@rhodelawfirm.com>
Sent: Thursday, May 19, 2022 4:32 PM
To: Nolte, Elisabeth P. - SOL <nolte.elisabeth.p@dol.gov>
Cc: Wilemon, Kevin - SOL <Wilemon.Kevin@dol.gov>
Subject: RE: Walsh v. Dayemi d/b/a Longbranch Cafe - Mot. to Strike Jury Demand on Good Faith

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Hi Elisabeth

Today and tomorrow are crazy since I have was in a trial until late yesterday. I'll try to get back to you by Monday. I'll let you know then if I would like to talk. Does that work?

Shari

Hi Kevin. Welcome

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From: Nolte, Elisabeth P. - SOL <nolte.elisabeth.p@dol.gov>
Sent: Thursday, May 19, 2022 4:27 PM
To: Shari Rhode <shari@rhodelawfirm.com>
Cc: Wilemon, Kevin - SOL <Wilemon.Kevin@dol.gov>
Subject: Walsh v. Dayemi d/b/a Longbranch Cafe - Mot. to Strike Jury Demand on Good Faith

Good afternoon Shari,

Hope you have been doing well since we last spoke! I'm emailing to introduce you to my co-counsel, Senior Trial Attorney Kevin Wilemon, and confer with you about a *Motion to Strike Defendants' Jury Demand Regarding Their Good Faith Affirmative Defense* the Secretary intends to file.

Kevin and I will be working together on this matter, so please include him in future communications for this case. We anticipate his Notice of Appearance will be filed soon. I have copied him on this email, as well.

Regarding the Motion, the Secretary plans to ask the Court to strike Defendants' jury demand regarding their good faith affirmative defense to liquidated damages, as there is no right to a jury trial on this issue. The statute requires the Court to determine whether liquidated damages are to be awarded (29 U.S.C. § 260), and it is well established by case law that juries cannot adjudicate defenses to liquidated damages. Could you please let us know whether Defendants oppose this Motion? I'm happy to discuss this with you, if needed. We are expecting to file this motion in the very near future, and would appreciate your response by tomorrow if possible. I'm technically on leave tomorrow but will be check in periodically and am happy to chat at any time convenient for you.

I appreciate your attention to this and look forward to hearing from you.

Thank you,
Elisa

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